

BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT
PANEL A

IN RE: ALVIN L. SIMES
ARKANSAS BAR ID NO. 89188
CPC DOCKET NO. 2007-116

FILED

JUN 18 2008

**LESLIE W. STEEN
CLERK**

FINDINGS AND ORDER

The formal charges of misconduct upon which this Findings and Order is based arose from information provided to the Committee from information contained in the syllabus of proceedings of the Arkansas Supreme Court. The information related to the representation of Mattie Allison by Alvin L. Simes, Attorney at Law, Forrest City, Arkansas.

Alvin L. Simes represented Mattie Allison in a personal injury matter in Lee County Circuit Court. The case was filed on November 19, 2004 and is styled Mattie Allison v. State Farm Insurance Company, Lee County Circuit Court Case No. CV2004-151. On September 25, 2006, the Honorable Harvey L. Yates granted summary judgment to State Farm Insurance Company. Mr. Simes filed a timely Notice of Appeal on October 26, 2006.

Pursuant to Rule 5(a) of the Rules of Appellate Procedure—Civil, the record was due to be filed with the clerk of the Arkansas Supreme Court within 90 days of the filing of the notice of appeal unless the time was extended by order of the circuit court. On January 24, 2007, Mr. Simes filed a Petition to Enlarge Time to File Transcript. The Petition was granted and the date to file the transcript was extended to April 24, 2007. According to Mr. Simes, he tendered the transcript to the Arkansas Supreme Court Clerk on April 23, 2007.

The Clerk of the Arkansas Supreme Court found that the January 24, 2007, Order did not meet the requirements of Rule 5(b)(1)(C) which requires that all parties have an opportunity to be

heard on the motion, either at a hearing or by responding in writing. The Clerk sent Mr. Simes a letter stating that he needed to file a Motion for Rule on the Clerk. As to the compliance with Rule 5(b)(1)(C), Mr. Simes stated that the trial court did not set a hearing on the motion and, further, a hearing could only be scheduled by the circuit court.

On July 26, 2007, Attorney for State Farm filed a Motion to Dismiss Appeal. A response to the Motion to Dismiss was due July 6, 2007. Mr. Simes stated that, as a solo practitioner, he needed an additional thirty days to respond to the Motion to Dismiss because of his demanding law practice. Mr. Simes filed a Motion for Enlargement of Time with the Arkansas Supreme Court on August 13, 2007. The Arkansas Supreme Court denied Mr. Simes' motion. On September 6, 2007, the Arkansas Supreme Court granted State Farm's Motion to Dismiss Appeal.

Upon consideration of the formal complaint and attached exhibit materials, the response to the formal complaint, and other matters before it, and the Arkansas Model Rules of Professional Conduct, Panel A of the Arkansas Supreme Court Committee on Professional Conduct finds:

1. Alvin L. Simes violated Rule 1.3 when he failed to file the record with the Arkansas Supreme Court Clerk on or before April 24, 2007, on behalf of his client, Mattie Allison, in the case of Mattie Allison v. State Farm Insurance Company, Arkansas Court of Appeals Case No. CA-2007-787. Rule 1.3 requires that a lawyer act with reasonable diligence and promptness in representing a client.

2. Alvin L. Simes violated Rule 3.4(c), when he failed in the case of Mattie Allison v. State Farm Insurance Company, Arkansas Court of Appeals Case No. CA-2007-787, to comply with Rule 5(a) of the Rules of Appellate Procedure–Civil, which requires that the record of the lower court proceedings be filed with the Arkansas Supreme Court Clerk within 90 days from the filing of the

first notice of appeal. Rule 3.4(c) requires that a lawyer not knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists.

3. Alvin L. Simes violated Rule 8.4(d) when his failure to file the record on or before April 24, 2007, resulted in his client's legal matter being dismissed. Rule 8.4(d) requires that a lawyer not engage in conduct that is prejudicial to the administration of justice.

WHEREFORE, it is the decision and order of the Arkansas Supreme Court Committee on Professional Conduct, acting through its authorized Panel A, that ALVIN L. SIMES, Arkansas Bar ID No. 89188, be, and hereby is, CAUTIONED; fined the sum of FIVE HUNDRED DOLLARS (\$500.00); and assessed costs in the amount of FIFTY DOLLARS (\$50.00) for his conduct in this matter. The fines and costs assessed herein shall be payable by cashier's check or money order payable to the "Clerk, Arkansas Supreme Court" delivered to the Office of Professional Conduct within thirty (30) days of the date this Findings and Order is filed of record with the Clerk of the Arkansas Supreme Court.

IT IS SO ORDERED.

ARKANSAS SUPREME COURT COMMITTEE ON
PROFESSIONAL CONDUCT - PANEL A

By: Steven Shults
Steven Shults, Chair

Date: March 21, 2008